

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2009 Iowa Acts, Senate File 476, section 4, the Department of Human Services proposes to amend Chapter 36, "Facility Assessments," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments are proposed in connection with the implementation of a nursing facility quality assurance assessment based on facilities' non-Medicare patient days. The quality assurance assessment shall be effective the first quarter beginning after all required Centers for Medicare and Medicaid Services approvals are obtained and shall be paid on a quarterly basis. The assessment shall be due to the Department no later than 30 days following the end of each quarter.

The following assessment brackets are proposed:

- \$1 per non-Medicare patient day if licensed beds are less than or equal to 50.
- \$1 per non-Medicare patient day for nursing facilities designated as continuing care retirement centers by the Iowa Insurance Division.
- \$1 per non-Medicare patient day for nursing facilities with annual Iowa Medicaid patient days of 26,500 or greater.
- \$5.26 per non-Medicare patient day for all other nursing facilities.

The following nursing facilities would be excluded from paying the quality assurance assessment:

- Nursing facilities operated by the state.
- Non-state government-owned or government-operated nursing facilities.
- Distinct-part skilled nursing unit or a swing-bed unit operated by a hospital.

The reimbursement methodology for nursing facilities is modified to provide a quality assurance assessment pass-through rate and a quality assurance assessment rate add-on, pursuant to 2009 Iowa Acts, Senate File 476.

These amendments do not provide for waivers in specified situations because all nursing facilities should be subject to the same assessment and reimbursement structure. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before September 15, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

The Department will also hold a public hearing for the purpose of receiving comments on these proposed amendments on Wednesday, September 16, 2009, from 2 to 4 p.m. in Room 129, Iowa Medicaid Enterprise Building, 100 Army Post Road, Des Moines, Iowa. Persons with disabilities who require assistive services or devices to observe or participate should contact the Bureau of Policy Analysis and Appeals at (515)281-8440 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement 2009 Iowa Acts, Senate File 476.

The following amendments are proposed.

ITEM 1. Adopt the following new Division II, heading and opening paragraph, in **441—Chapter 36**:

DIVISION II
QUALITY ASSURANCE ASSESSMENT FOR NURSING FACILITIES

These rules describe the nursing facility quality assurance assessment authorized by 2009 Iowa Acts, Senate File 476, enacted by the Eighty-third General Assembly. The rules explain how the assessment is determined and paid.

ITEM 2. Adopt the following new rules 441—36.6(83GA,SF476) and 441—36.7(83GA,SF476) in Division II:

441—36.6(83GA,SF476) Assessment.

36.6(1) *Applicability.* All nursing facilities as defined in Iowa Code section 135C.1 that are free-standing facilities or are operated by a hospital licensed pursuant to Iowa Code chapter 135B shall pay a quarterly assessment to the Department, as determined under this division, with the exception of:

- a. Nursing facilities operated by the state.
- b. Non-state government-owned or government-operated nursing facilities.
- c. Distinct-part skilled nursing units and swing-bed units operated by a hospital.

36.6(2) *Assessment level.*

- a. Nursing facilities with 50 or fewer licensed beds are required to pay a quality assurance assessment of \$1 per non-Medicare patient day.
- b. Nursing facilities designated as continuing care retirement centers (CCRCs) by the insurance division of the Iowa department of commerce are required to pay a quality assurance assessment of \$1 per non-Medicare patient day.
- c. Nursing facilities with annual Iowa Medicaid patient days of 26,500 or more are required to pay a quality assurance assessment of \$1 per non-Medicare patient day.
- d. All other nursing facilities are required to pay a quality assurance assessment of \$5.26 per non-Medicare patient day.

441—36.7(83GA,SF476) Determination and payment of assessment. The assessment shall be determined and paid as follows:

36.7(1) Each nursing facility shall pay the quality assurance assessment to the department on a quarterly basis. The facility shall:

- a. Use Form 470-4836, Nursing Facility Quality Assurance Assessment Calculation Worksheet, to calculate the quarterly assessment amount due.
- b. Submit Form 470-4836 and the quarterly assessment payment no later than 30 days following the end of each calendar quarter.

36.7(2) The facility shall calculate the amount of the quarterly assessment due by multiplying the facility's total non-Medicare patient days for the preceding quarter by the applicable assessment level as determined in subrule 36.6(2).

36.7(3) If the department determines that a nursing facility has underpaid or overpaid the quality assurance assessment, the department shall notify the nursing facility of the amount of the unpaid quality assurance assessment or refund due. Such amount shall be due or refunded within 30 days of the issuance of the notice.

36.7(4) A nursing facility that fails to pay the quality assurance assessment within the time frame specified above shall pay a penalty in the amount of 1.5 percent of the quality assurance assessment amount owed for each month or portion of a month that the payment is overdue.

36.7(5) For facilities certified to participate in the Medicaid program, the department shall deduct the quarterly amount due from Medicaid payments to the facility if the department has not received the quality assurance assessment amount due by the last day of the month in which the payment is due. The department shall also withhold an amount equal to the penalty owed from any payment due.

ITEM 3. Adopt the following new implementation sentence for **441—Chapter 36**, Division II: These rules are intended to implement 2009 Iowa Acts, Senate File 476.

ITEM 4. Adopt the following new paragraph **81.6(11)“p”**:

p. The nursing facility quality assurance assessment paid pursuant to 441—Chapter 36, Division II, shall not be an allowable cost for cost reporting and audit purposes but shall be reimbursed pursuant to paragraph 81.6(21)“a.”

ITEM 5. Adopt the following new subrule 81.6(21):

81.6(21) Nursing facility quality assurance payments.

a. Quality assurance assessment pass-through. Effective with the implementation of the quality assurance assessment paid pursuant to 441—Chapter 36, Division II, a quality assurance assessment pass-through shall be added to the Medicaid per diem reimbursement rate as otherwise calculated pursuant to this rule. The quality assurance assessment pass-through shall equal the per-patient-day assessment determined pursuant to 441—subrule 36.6(2).

b. Quality assurance assessment rate add-on. Effective with the implementation of the quality assurance assessment paid pursuant to 441—Chapter 36, Division II, a quality assurance add-on of \$10 per patient day shall be added to the Medicaid per diem reimbursement rate as otherwise calculated pursuant to this rule.

c. Use of the pass-through and add-on. As a condition for receipt of the pass-through and add-on, each nursing facility shall submit information to the department on Form 470-4829, Nursing Facility Medicaid Enhanced Payment Report, demonstrating compliance by the nursing facility with the requirements for use of the pass-through and add-on. If the sum of the quality assurance assessment pass-through and the quality assurance assessment rate add-on is greater than the total cost incurred by a nursing facility in payment of the quality assurance assessment:

(1) No less than 35 percent of the difference shall be used to increase compensation and costs of employment for direct care workers determined pursuant to 2009 Iowa Acts, Senate File 476.

(2) No less than 60 percent of the difference shall be used to increase compensation and costs of employment for all nursing facility staff, with increases in compensation and costs of employment determined pursuant to 2009 Iowa Acts, Senate File 476.

d. Effective date. Until federal financial participation to match money collected from the quality assurance assessment pursuant to 441—Chapter 36, Division II, has been approved by the federal Centers for Medicare and Medicaid Services, none of the nursing facility rate-setting methodologies of this subrule shall become effective.

e. End date. If the federal Centers for Medicare and Medicaid Services determines that federal financial participation to match money collected from the quality assurance assessment pursuant to 441—Chapter 36, Division II, is unavailable for any period, or if the department no longer has the authority to collect the assessment, then beginning on the effective date that such federal financial participation is not available or authority to collect the assessment is rescinded, none of the nursing facility rate-setting methodologies of this subrule shall be effective. If the period for which federal match money is unavailable or the authority to collect the assessment is rescinded includes a retroactive period, the department shall:

(1) Recalculate Medicaid rates in effect during that period without the rate-setting methodologies of this subrule;

(2) Recompute Medicaid payments due based on the recalculated Medicaid rates;

(3) Recoup any previous overpayments; and

(4) Determine for each nursing facility the amount of quality assurance assessment collected during that period and refund that amount to the facility.

ITEM 6. Amend rule **441—81.6(249A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections ~~249A.2(6), 249A.3(2)“a,”~~ 249A.2(7), 249A.3(2)“c,” 249A.4, and 249A.16, chapter 249K, and 2009 Iowa Acts, Senate File 476.